

Municipalities
PUC Docket No. DM 05-172
Responses to Staff's Follow-Up Data Requests – Topic 3

Request 4-4B Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are entitled to attach or place wires on or in utility-owned poles and conduit, respectively, without payment of attachment or conduit fees. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

In summary, several municipalities have explicit conduit and/or pole licenses permitting and authorizing the use of space for municipal purposes, without any requirement of payment of fees. In addition, some municipalities have contractual relationships dating back as much as 120 years for installation by the telephone company of a municipal network on the poles, again without the requirement of payment of fees. The inter-company operating procedure (“IOP”) between PSNH and Nynex New England, and possibly other electric companies and Verizon and/or its predecessor(s), also require the availability of space on poles provided by each owner/user of the pole in equal contribution. IOP No. 3, page 7, item 3. In other communities, the long-standing practice has been the placement of municipal wires on poles for municipal purposes with the tacit knowledge and understanding of the pole owners, without the requirement of the payment of fees.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town of Hanover has records of pole and conduit licenses dating back to 1910. Beginning in 1941, all of the underground telephone conduit licenses and many of the pole licenses have included the following two provisions:

1. “In every underground conduit constructed by said company, one duct not less than three inches in diameter shall be reserved and maintained free of charge for the use of the fire, police, telephone and telegraph signal wires belonging to the Town and used by it exclusively for municipal purposes.”
2. “Said company shall comply with the requirements of existing by-laws/ordinances and such as and such as may hereafter be adopted, governing the construction and maintenance of conduits, poles and wires so far as the same are not inconsistent with the laws of the State of New Hampshire.”

The Town of Hanover believes it has the right to request that municipally owned fiber be co-located in telephone or electric conduit based on the first condition outlined above. In addition, the Town believes it has the right under state law at any time to adopt an ordinance requiring co-location of

municipal fiber on the poles. In practical terms, the Town of Hanover also has, already residing on the poles, an extensive network of municipal fire alarm cable. The Town has not been required to obtain approval from the utilities to install this cable nor to maintain such. Over the years, we have installed additional cable as new facilities required hook-up. It would appear that expansion of that system throughout the Town would be allowed based on past practice, and overlashing of that cable with fiber would also be allowed.

Sample copies of the relevant pole and conduit licenses are attached for reference, as well as a map of the Town's current fire alarm network (Exhibit Hanover 4-4B).

KEENE

1. The City of Keene entered into a contractual agreement with New England Telephone & Telegraph Company (NETT) dated June 25, 1885 (Attachment 4-4B Keene - A) for the installation of a fire alarm telegraph system. Included in the second paragraph is the language, "...and said company [NETT] agreeing to reserve a top four-pin arm, or its equivalent, for the use of city wires upon its poles and structures throughout the circuit above mentioned, and to put up said wire with all joints soldered, in a thorough and workmanlike manner so as not to be liable to probable interference from the contact of telephone wires." This agreement established the requirement for NETT to reserve space on its poles for City use and does not require attachment or other fees. Both the city fiber optic cabling and fire alarm cabling are installed and maintained for public safety purposes which include the availability of phone and other communication systems, and are used only for government purposes.
2. The City of Keene issued a license to NETT dated April 3, 1907 (Attachment 4-4B Keene - B) for the installation and maintenance of underground conduits and manholes. Included in the third paragraph is the language, "...That in every underground conduit constructed by said Company one duct not less than three inches in diameter shall be reserved and maintained free of charge for the use of the fire, police, telephone and telegraph wires belonging to the City and used exclusively for municipal purposes." This license clearly includes the requirement for NETT to reserve conduit space for City use and does not require usage or other fees. This condition is repeated in additional licenses issued including licenses in 1960 and 1998. Both the city fiber optic cabling and fire alarm cabling are installed and maintained for public safety purposes which include the availability of phone and other communication systems, and are used only for municipal purposes.
3. All City of Keene fiber optic cabling is presently overlashed with pre-existing fire alarm cable. In Southern Co. Svcs. V. F.C.C., 313 F.3d 574 (D.C. Circuit 2002), section B, "The Overlashing Rules", second paragraph, "...Because overlashing by definition involves a physical connection to other wires and not to the pole itself, the Commission concluded that a utility is not entitled to charge overlashing parties for pole space." At present, the City of Keene is billed attachment fees by both Verizon and Public Service of New Hampshire for fiber optic cables which are overlashed with pre-existing fire alarm cables. The case cited above clearly indicates the attachment fees are not justified.
4. In the Intercompany Operating Procedures (IOP) between PSNH and Nynex New England (NNE) (Attachment 4-4B Keene C), IOP #3, page 7, item 3, it is stated, "Municipal space and/or space for other authorized licenses shall be made available through equal contribution by each owner, whenever possible." This indicates that, by intercompany agreement, both PSNH and Verizon are required to reserve space on poles for municipal use without any prerequisite of site survey or make-ready services.

In summary, both City of Keene fire alarm cabling and fiber optic network cabling are installed and maintained exclusively for government purposes and are utilized by the Police and Fire Departments for the provision of essential public safety services. Space has historically been reserved and is required by contractual agreement. The overlashing of fiber optic cabling with fire alarm cabling does not constitute a separate attachment for which space is reserved or for which attachment fees or site survey or make-ready work is required.

NEWMARKET

The Town of Newmarket only has attachments to utility poles for fire alarm cabling and public safety system purposes. These systems are maintained as necessary, expanded to meet the needs of the system for expansion, service, and maintenance. This has been a working arrangement without formal paperwork.

Notwithstanding the above, the Town of Newmarket maintains that it has the authority to grant and amend licenses under the provisions of NH RSA 231 in general and specifically as to amendments at RSA 231:163, and the holdings of Verizon New England, Inc. v. City of Rochester, 151 NH 263 (2004) and New England Telephone & Telegraph Co. v. City of Rochester, 144 NH 118 (1999). Such a process may be ordered as part of the licensing process.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to the municipality attaching to a utility pole without payment.

RAYMOND

I am unaware of the existence of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

Municipal fire alarm in existence since 1963. No fees ever charged.

STRATHAM

None, other than provisions contained in existing pole licenses, state statutes, any other doctrine of law that applies.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Rebecca Little, City Clerk
Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook: Joseph Titone, Emergency Management Director
Jeffrey Brown, Fire Chief

Stratham: Paul Deschaine, Town Administrator

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Request 4-4C Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are entitled to attach or place its wires on or in utility-owned poles and conduit, respectively, without payment of make-ready, engineering or survey costs associated with the attachment or placement of its wires on utility owned poles and conduit, respectively. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

Municipalities generally have a practice of using space reserved on poles for municipal purposes or in conduit without the need for engineering or survey costs or make-ready. This is due to the fact that space is generally set aside for municipal purposes and no equipment needs to be moved in order to maintain, install or repair municipal equipment on the poles. Furthermore, any overloading of existing facilities on the poles does not require movement of any other equipment, therefore no costs are generally incurred. None of the pole licenses or other agreements pertaining to the reservation of space for municipal purposes on poles or in conduits requires payment of make-ready, engineering or survey costs.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

Sample conduit licenses attached in reference to Request 4-4B specify the ability of the Town of Hanover to install fiber in telephone conduit without reference to any payments required by the Town.

Past practice with respect to installation of municipal fire alarm cable on utility poles, which has been done without approval by the utility companies and without payment of any make-ready fees, has been interpreted as the Town's right to install public safety related communications equipment, which is a right granted explicitly in conduit licenses and has been allowed without prior agreement or fee over many years.

KEENE

City of Keene fiber optic cabling is overlashed with existing fire alarm cable on utility poles. There is no need to free up any additional space on the poles, and, therefore, no need for site survey or make ready services. In addition, in the Intercompany Operating Procedures (IOP) between PSNH and Nynex New England (NNE) (Attachment 4-4B Keene C), IOP #3, page 7, item 3, it is stated, "Municipal space and/or space for other authorized licenses shall be made available through equal contribution by each owner, whenever possible." By intercompany agreement, both PSNH and Verizon are required to reserve space on poles for municipal use without any prerequisite of site survey or make-ready services.

Furthermore, per recent discussion with New Hampshire Local Government (LGC) staff and according to Verizon's most recent rate case with the PUC, Verizon includes the costs associated with this municipal space reservation requirement in the rates charged to consumers for Verizon services.

NEWMARKET

The Town of Newmarket only has attachments to utility poles for fire alarm cabling and public safety system purposes. These systems are maintained as necessary, expanded to meet the needs of the system for expansion, service, and maintenance.

Notwithstanding the above, the Town of Newmarket maintains that it has the authority to grant and amend licenses under the provisions of NH RSA 231 in general and specifically as to amendments at RSA 231:163, and the holdings of Verizon New England, Inc. v. City of Rochester, 151 NH 263 (2004) and New England Telephone & Telegraph Co. v. City of Rochester, 144 NH 118 (1999). Such a process may be ordered as part of the licensing process.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to the municipality attaching to a utility pole without make-ready engineering or survey costs.

RAYMOND

I am unaware of the existence of any such rules or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

See response to Request 4-4B

STRATHAM

See response to Request 4-4B

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Patricia Little, City Clerk

Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

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Request 4-4D Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that existing attachers, including the utility that owns the pole, are required to bear costs for make-ready (rearrangements, etc.) if modifications to poles are caused by a municipality's request to attach its wires. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

None of the responding municipalities have by-laws, rules or other documents relating to the requirement that other attachers bear the costs of make-ready, etc., for a municipality's request to attach new wires or include new wires in a conduit. As a practical matter, the situation has not arisen. Although existing documents do not specifically address this question, the reservation of space in pole and conduit licenses as well as the contracts and IOP's suggest that municipalities are entitled to use of such space without payment of make-ready, engineering and survey costs.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town of Hanover has no such municipal by-law or rule. By conduit license (samples provided), underground conduit must be reserved for Town use and it would be the Town's intent to install the fiber in that conduit on its own, using a licensed installer. With respect to the installation of fire alarm cable, in the past the cable company and/or telephone providers have not been required to engage in any make-ready activities in order to enable the installation of our cable.

KEENE

1. Since 1993 as fire alarm superintendent, Captain John Beckta has not encountered a situation where any utility was required to move its equipment to make ready for municipal fire alarm to be attached to a pole. The City does have language in the fire alarm ordinance detailing a property owner's responsibilities when attaching to the municipal circuit, though in the matter where public utilities are concerned the City has no involvement.
2. City of Keene fiber optic cabling is overlashed with existing fire alarm cable on utility poles. There is no need to free up any additional space on the poles, and, therefore, no need for site survey or make ready services at the expense of any party. In addition, in the Intercompany Operating Procedures (IOP) between PSNH and Nynex New England (NNE) (Attachment 4-4B Keene C), IOP #3, page 7, item 3, it is stated, "Municipal space and/or space for other authorized licenses shall be made available through equal contribution by each owner, whenever possible."

By intercompany agreement, both PSNH and Verizon are required to reserve space on poles for municipal use without any prerequisite of site survey or make-ready services. Furthermore, per discussion with New Hampshire Local Government (LGC) staff and according to Verizon's most recent rate case, Verizon includes the costs associated with this municipal space reservation requirement in the rates charged to consumers for Verizon services.

3. The City of Keene entered into a contractual agreement with New England Telephone & Telegraph Company (NETT) dated June 25, 1885 (Attachment 4-4B Keene – A) for the installation of a fire alarm telegraph system. Included in the second paragraph is the language, "...and said company [NETT] agreeing to reserve a top four-pin arm, or its equivalent, for the use of city wires upon its poles and structures throughout the circuit above mentioned, and to put up said wire with all joints soldered, in a thorough and workmanlike manner so as not to be liable to probable interference from the contact of telephone wires." This agreement established the requirement for NETT to reserve space on its poles for City use and does not require attachment or other fees. Both the city fiber optic cabling and fire alarm cabling are installed and maintained for public safety purposes which include the availability of phone and other communication systems, and are used only for government purposes.

In summary, Verizon and PSNH have historically reserved space for the attachment of fire alarm cabling, thus eliminating the need for any alterations to attachments or poles for the installation of fire alarm cabling. Because (a) the fiber optic cabling is overlashed with existing fire alarm cable and used exclusively for government purposes including utilization by the Police and Fire Departments for the provision of essential public safety services, and (b) the reservation of space for municipal purposes is required by contractual agreements between both the City of Keene and Verizon as well as PSNH and Verizon, there is no requirement for make-ready services.

NEWMARKET

The Town of Newmarket has not asked a utility to bear the cost of make-ready work and has not formed a "position."

Notwithstanding the above, the Town of Newmarket maintains that it has the authority to produce and amend licenses under the provisions of NH RSA 231 in general and specifically as to amendments at RSA 231:163, and the holdings of Verizon New England, Inc. v. City of Rochester, 151 NH 263 (2004) and New England Telephone & Telegraph Co. v. City of Rochester, 144 NH 118 (1999). As such, reservations of space may be ordered.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to rearrangements and modifications to poles caused by a municipality's request to attach.

RAYMOND

I am not aware of the existence of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

The Town of Seabrook has never dealt with this issue, as it has always moved its own wires.

STRATHAM

Requires a legal conclusion that I am unable to make. See response to 4-4B otherwise.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: John Beckta, Captain/Fire Alarm Bureau, Keene Fire Department
Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook: Joseph Titone, Emergency Management Director
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Request 4-4E Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that utilities should or are required to reserve space on poles for municipal use. If this is the position followed by your municipality, please explain your position in detail, including how this is not discriminatory under federal law relative to other attachers.

SUMMARY

Documents in several communities, including Hanover and Keene, explicit reserve space on poles and/or in conduits for municipal use. In other communities, similar documentation undoubtedly existed at one time but has not been preserved. Instead, there is a pattern of past usage in many communities, including Seabrook, Exeter, and Newmarket, for equipment on poles for municipal purposes. In addition, New Hampshire Statutes, RSA Chapter 231, authorize the amendment of pole licenses for any change that is in the public good, which could include changes to reserve space on poles for municipal equipment for emergency and other municipal purposes. Some communities have engaged in amending their pole licenses explicitly to reserve space. Many communities view the use of space on poles and/or in conduits for municipal purposes as a reasonable requirement in exchange for the granting of the licenses to locate the equipment in the public right-of-way, for which rent is not charged.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

See response to Request 4-4B. The conduit licenses include explicit requirements that space be reserved for municipal purposes. In addition, RSA Chapter 231 allows amendment to pole licenses for “the public good,” which could include reservation of space for municipal purposes, including emergency management.

KEENE

1. The City of Keene entered into a contractual agreement with New England Telephone & Telegraph Company (NETT) dated June 25, 1885 ([Attachment 4-4B Keene - A](#)) for the installation of a fire alarm telegraph system. Included in the second paragraph is the language, “...and said company [NETT] agreeing to reserve a top four-pin arm, or its equivalent, for the use of city wires upon its poles and structures throughout the circuit above mentioned, and to put up said wire with all joints soldered, in a thorough and workmanlike manner so as not to be liable to probable interference from the contact of telephone wires.” This agreement established the requirement for NETT to reserve space on its poles for City use and does not require attachment or other fees. Both the City fiber optic cabling and fire alarm cabling are installed and maintained

for public safety purposes which include the availability of phone and other communication systems, and are used only for government purposes.

2. In the Intercompany Operating Procedures (IOP) between PSNH and Nynex New England (NNE) (Attachment 4-4B Keene C), IOP #3, page 7, item 3, it is stated, “Municipal space and/or space for other authorized licenses shall be made available through equal contribution by each owner, whenever possible.” By intercompany agreement, both PSNH and Verizon are required to reserve space on poles for municipal use without any prerequisite of site survey or make-ready services.
3. Per recent discussion with New Hampshire Local Government (LGC) staff and according to Verizon’s most recent rate case with the PUC, Verizon includes the costs associated with the municipal space reservation requirement in the rates charged to consumers for Verizon services.
4. The City of Keene does not provide services that are competitive with the services provided by other entities which install and maintain pole attachments such as telephone, cable television, and Internet/network service providers. Telecommunication, video, and Internet/network service providers utilize pole attachments as a means to generate revenue from the payments of consumers who choose to subscribe for the providers’ services. The City of Keene fire and fiber optic cabling is maintained for the public good and is required to provide essential services such as public safety (Police, Fire, Emergency Operations, Emergency Response, Public Works, etc.), and public health (Code Enforcement, Water, Sewer, Welfare, etc.). The Municipal services that rely upon cabling which is attached to utility poles have a purpose much different than that of competitive telecommunication, video, and network service providers.

In summary, both City of Keene fire alarm cabling and fiber optic network cabling are installed and maintained exclusively for government purposes and are utilized by the Police and Fire Departments for the provision of essential public safety services. Space has historically been reserved and is required so by contractual agreement due to the important nature of municipal services which is focused on the public good - not profit.

NEWMARKET

The Town of Newmarket maintains that it has the authority to grant and amend licenses under the provisions of NH RSA 231 in general and specifically as to amendments at RSA 231:163, and the holdings of Verizon New England, Inc. v. City of Rochester, 151 NH 263 (2004) and New England Telephone & Telegraph Co. v. City of Rochester, 144 NH 118 (1999). As such, reservations of space may be ordered.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to the reservation of space on a utility pole for municipality use.

RAYMOND

I am not aware of the existence of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

Homeland Security considerations (Patriot Act) may contain provisions for this. Once again, the Town has had a hard wired municipal fire alarm since 1963.

STRATHAM

See response to 4-4D, which also references 4-4B.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Patricia Little, City Clerk
Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook: Joseph Titone, Emergency Management Director
Jeffrey Brown, Fire Chief

Stratham: Paul Deschaine, Town Administrator

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Request 4-4F Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that utilities can require telecommunications and cable television pole attachers to remove or rearrange their wires without at least 60 days prior written notice, absent an emergency situation for which advance written notice is impractical. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

The municipalities have not addressed situations where utilities needed to require movement of telecommunication or cable television wires or cables with less than 60 days notice. However, municipalities retain the right and the obligation to maintain safety in the public right-of-way for pedestrian and vehicular traffic and for other safety considerations, including the need for municipal, emergency and other communications via a municipal network or alarm system.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town of Hanover has no by-law or rule which governs the management of telecommunications or cable television pole attachers on utility poles.

KEENE

City of Keene staff has had success in communicating pole attachment and structure adjustment requirements within a reasonable time frame. As far as municipal attachment requirements are concerned, the advance reservation of space for the attachment of fire alarm cabling eliminates the need for unreasonably short response times for other attachers' adjustment requirements, and, in the case that adjustments are required to accommodate the installation of fire alarm cabling, other attachers have been cooperative.

NEWMARKET

The Town of Newmarket maintains that it has the authority to grant and amend licenses under the provisions of NH RSA 231 in general and specifically as to amendments at RSA 231:163, and the holdings of Verizon New England, Inc. v. City of Rochester, 151 NH 263 (2004) and New England Telephone & Telegraph Co. v. City of Rochester, 144 NH 118 (1999). As such, this process may be ordered.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to requiring utilities to remove or rearrange their wires without 60 days written notice. That stated, the City maintains its right to demand removal of wires and attachments sooner than 60 days should the attachments be in violation of any existing licenses or create safety or other hazards. In particular, the City references its previously described experience with Verizon hanging its new fiber optic cables and locating a number of its fiber boxes in poles in locations that were unacceptable to the City. For example, some of the fiber boxes were installed approximately 4 to 5 feet off the ground. Some hung in that manner interfered with the line of sight and with pedestrian safety on the sidewalk, for example. The City demanded that the boxes be hung higher. The City interpreted its existing licenses to allow for the installation of aerial boxes not curbside. This issue was described in one of the City's prior responses.

RAYMOND

I am not aware of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

No response provided.

STRATHAM

See response to 4-4D, which also references 4-4B.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: John Beckta, Captain/Fire Alarm Bureau, Fire Department
Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator

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Responses to Staff's Follow-Up Data Requests – Topic 3

Request 4-4G Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that municipalities are not counted as attachers for purposes of apportioning the cost of unusable space under the FCC's pole-attachment rate formula applicable to telecommunications carriers. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

None of the municipalities report any rules, etc. pertaining to FCC's pole attachment rate formula. None have been assessed any attachment fees or other costs related to "unusable space".

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town has no specific by-laws or rules relative to this issue nor is it familiar with the FCC's Pole Attachment Rate Formula. In actual practice, the Town of Hanover has never been assessed a pole attachment fee for any of the poles upon which we have installed fire alarm cable dating back several decades.

KEENE

The City of Keene is not a telecommunications carrier. The services enabled by City attachments are solely for government services and are provided for the public good.

NEWMARKET

The Town of Newmarket has no information on the FCC pole attachment rate formula.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to the apportionment of costs of unuseable space.

RAYMOND

I am not aware of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

No response provided.

STRATHAM

See responses to 4-4D and 4-4B.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator

Municipalities
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Request 4-4H Asked of Municipalities:

Please list the attachment rates per solely-owned and jointly-owned utility poles per year that you pay or have paid to utilities in New Hampshire, identifying the specific rates for each utility. Similarly, please also list the conduit rates per utility that you pay or have paid.

SUMMARY

The municipalities have not been assessed attachment rates for any of their existing fire alarm or municipal network equipment, with the exception of the City of Keene and the Town of Salem which have been assessed rates for their municipal fiber optic attachment overlashing, as specified below.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town of Hanover has never been assessed nor has it paid any attachment rates to utilities for installation of municipal fire alarm cable on utility poles or in reserved utility conduit.

KEENE

The City is not assessed attachment fees for fire alarm cable. The present rates assessed for municipal fiber optic attachment overlashings according to the most recent invoices are as follows:

Verizon:

\$4.84 per Jointly Owned Pole

PSNH:

\$7.71 per Jointly Owned Pole

\$46.01 per Solely Owned Pole

NEWMARKET

We have paid no such fees.

PORTSMOUTH

No attachment payments have been made.

RAYMOND

I am not aware of any attachment rates or conduit rates which the Town pays.

SALEM

Attachment rates for fiber optic line from Town Hall to Police Department: \$390.46 per year to Granite State Electric/National Grid; \$87.12 per year to Verizon

SEABROOK

No response provided.

STRATHAM

We have never incurred such costs nor have we sought to make these attachments to date.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator

Municipalities
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Request 4-4I Asked of Municipalities:

Please provide copies of any municipal by-laws, rules and/or other related documents, as well as citations to rules, regulations, statutes or FCC and NHPUC orders that support the position that the FCC prohibits utilities from charging municipalities or individual parties for relocating poles, whether temporarily or permanently, when done at the municipality's or individual's request. If this is the position followed by your municipality, please explain your position in detail.

SUMMARY

The municipalities report no specific by-laws or ordinances, but some of the licenses granted by the City of Keene provide the municipality with the right to request removal and replacement of the poles at the municipality's request. In addition, New Hampshire Statute and case law supports the authority of a municipality to request that utilities relocate facilities at their own expense whenever the relocation is necessary for public health, safety or convenience.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

RSA 231:177 – 182 specifies the conditions under which a municipality can require the permanent or temporary relocation or removal of poles or wires, upon 10 days written notice delivered to an agent of the utility. According to "A Hard Road to Travel" published by New Hampshire Local Government Center and which serves as a legal advisory document to New Hampshire municipalities relative to management of rights-of-way, "It is well settled, even under this state's common law, that in the absence of express provisions to the contrary, utilities are required to relocate their facilities at their own expense whenever that relocation becomes necessary for public health, safety or convenience." Hence, the relocation of poles and/or wires by the utilities at their expense to enable the installation of municipal cable, whether to enhance public safety, to improve the efficiency of municipal communications, or to serve the public good by providing access to an integral telecommunications service such as high speed internet, is deemed to be legally appropriate for municipalities to request, at no cost to the municipality.

KEENE

1. The utilities have historically moved poles for City of Keene construction projects without charge due to the requirements of the licenses.
2. Conditions of license...1930
"...Said company shall comply with the requirements of existing ordinances and such as may hereafter be adopted, governing the construction and maintenance of conduits, poles and wires."

Conditions of license...1932

“...These poles shall be kept well and neatly painted and shall be located and erected under the direction of the Superintendent of Highways.”

Conditions of license...1932

“...The poles shall be located between the traveled driveway and the limits of the highway and at the usual distance apart and shall be of wood or other suitable material and the wires shall be run at the usual height along and across the highway. After the poles and wires have been located as specified in this permit alterations shall be made in the locations or erection of the poles and in the height of the wires if so directed by the proper municipal authorities.”

Conditions of license...1972

“...Said company shall comply with the requirements of existing by-laws/ordinances and such as may hereafter be adopted, governing the construction and maintenance of buried cable, conduits, pedestals, and wires so far as the same are not inconsistent with the laws of the State of New Hampshire.”

Conditions of license1998

“...Said company shall comply with the requirements of existing by-laws ordinances and such as may hereafter be adopted, governing the construction and maintenance of conduits and wires so far as the same are not inconsistent with the laws of the State of New Hampshire.”

Conditions of license...2003

“...All of said wires except such as are vertically attached to poles and structures shall be placed in accordance with the National Safety Code in effect at the time of petition and/or license is granted.”

3. **231:168 Interference with Travel.** – The location of poles and structures and of underground conduits and cables by the selectmen shall be made so far as reasonably possible so that the same and the attachments and appurtenances thereto will not interfere with the safe, free and convenient use for public travel of the highway or of any private way leading therefrom to adjoining premises or with the use of such premises or of any other similar property of another licensee. The location of any such pole or structure or underground conduit or cable, when designated by the selectmen pursuant to the provisions of this subdivision shall be conclusive as to the right of the licensee to construct and maintain the same in the place located without liability to others except as is expressly provided in RSA 231:175 and 231:176. In no event shall any town or city or any official or employee thereof or of the department of transportation be under liability by reason of the death of or damages sustained by any person or to any property occasioned by or resulting from the location, construction, or maintenance of any pole, structure, conduit, cable, wire, or other apparatus in any highway, pursuant to the provisions of this subdivision.

NEWMARKET

The Town of Newmarket maintains that it has the authority to produce and amend licenses under the provisions of NH RSA 231 in general and to require movement of equipment in the right of way at the utilities' expense. As such, a process reflecting the above may be ordered.

PORTSMOUTH

The City has no municipal ordinances, rules, licenses or other documents relative to the relocation of utility poles. The City relies upon the state statutes and case law with regard to utility relocations. The City takes the position that relocations, either temporary or permanent, required as a result of municipal improvements for the convenience and safety of the traveling public are moved at utility expense. Utility poles and equipment on private property are regulated through the City's Zoning Ordinance found at www.cityofportsmouth.com.

RAYMOND

I am not aware of any such rules and/or regulations.

SALEM

We have no knowledge of such municipal by-laws, rules, etc.

SEABROOK

No response provided.

STRATHAM

See response to 4-4D.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Tom Dutton, City Engineer, Department of Public Works
Patricia Little, City Clerk

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator

Municipalities
PUC Docket No. DM 05-172
Responses to Staff's Follow-Up Data Requests – Topic 3

Request 4-5A Asked of Municipalities:

Please describe what types of communication cable(s) you are running in the municipal space and their use, other than from traditional fire/police signal cable.

SUMMARY

Several municipalities report fiber optic or other network equipment connecting municipal facilities and other emergency, public safety facilities. Many of these are overlashed to existing alarm wire, and some communities are considering further deployment in this area. All of the existing networks are for municipal purposes only.

SPECIFIC RESPONSES

EXETER

No response provided.

HANOVER

The Town of Hanover is not currently running any other communication cable in the municipal space on utility poles, although it has received bids for the installation of fiber optic cable on all poles connecting the Town and School District's multiple municipal facilities.

KEENE

The City of Keene presently maintains a fiber optic network via cables that are overlashed with fire alarm cables on Verizon and PSNH owned utility poles. The cabling extends to City facilities to provide telephone and network services, and is also utilized for minimal public education and County connections. Telecommunications services purchased by the city, such as phone services and Internet service, can be terminated in a central location such as City Hall and then distributed to other facilities via this fiber network. The services made available via this fiber network are utilized by departments whose primary mission is to serve the public and provides functionality for critical email communications, database access, telephone service, and other activities. This network enables access to state applications utilized by the Police, Fire, Public Works, Clerks, and other departments. The network is also installed in buildings that may become shelters in the case of disaster, such as the flooding that took place in October 2005. In that case, the agencies providing government and other services to those in the shelter required and utilized the network for telephone, Internet, and database access. The network is the nucleus of City operations and is required to provide essential services such as public safety (Police, Fire, Emergency Operations, Emergency Response, Public Works, etc.), and public health (Code Enforcement, Water, Sewer, Welfare, etc.). The Emergency Operations Command Center (EOC) recently relied upon telephone, Internet, and network connections made possible by this municipal fiber during the October 2005 floods as well as other events during which the services of the EOC were required for the public good.

NEWMARKET

The Town of Newmarket maintains a cable that links government buildings to a central network hub. We are unclear of what is meant in the definition of “traditional fire/police signal cable.” However, the cabling provides this service as a link for all departments, including police/fire signals.

PORTSMOUTH

None.

RAYMOND

I am not aware of the Town running any cables in municipal space.

SALEM

Fiber optic line from Town Hall to Police Department used for data communications between the buildings.

SEABROOK

As stated in its response to Revised Staff Request 4-4, at the present time the Town has a fiber optic network, municipal fire alarm and sewer monitoring located on poles.

STRATHAM

None as of July 26, 2006.

RESPONSES PROVIDED BY:

Exeter:

Hanover: Julia Griffin, Town Manager

Keene: Rebecca Landry, Director, Information Management Services Department

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator

Municipalities
PUC Docket No. DM 05-172
Responses to Staff's Follow-Up Data Requests – Topic 3

Request 4-21C Asked of Electric, Verizon, NHDOT and Municipalities:

Please describe how scheduling changes for public works projects are recorded and tracked by your organization. Please provide sample documentation from a job completed after January 1, 2005.

SUMMARY

The procedures in municipalities vary, with most of responding municipalities using a formal or informal meeting structure with municipal officials and utility engineers to plan the sequencing and timing of utility work for construction projects and public works. As noted, there have been problems with this process and improvements could be made with regard to the authority of individuals attending such meetings to commit their companies to a particular schedule and general responsiveness to schedule and placement or removal requests.

SPECIFIC RESPONSES

EXETER

The Town does not have a specific formal process. If the Town is planning a large project, it will invite the utilities in for a pre-construction meeting for planning purposes.

HANOVER

Hanover does not have a standard operating procedure. We have found that it doesn't matter whether we contact utilities early or as we are doing work, we get the same response or lack of response. We have tried to involve utilities early and generally do not get commitments or they just don't send anyone who can make a decision. Often players change and there doesn't seem to be an internal process that we can rely upon. For instance, we will contact the Verizon Lead Engineer who will attend any meeting, but he doesn't determine whether they can accommodate our work nor does he schedule their crews, so the answer we typically get is "just work around us." In the end that is what we do. We are often waiting years for poles to be removed, and even when we get a commitment for the work to be done we never receive a schedule of when Verizon might in fact accomplish their work.

We have had to relocate sewers, drains, water mains, sidewalks and intersections around poles that Verizon could not or would not move. The following are examples of two current projects the Town is presently working on: a new water treatment facility which needs an upgraded service for three phase power and an intersection upgrade with utility conflicts.

The Water Treatment Facility: Approximately two years ago, [Peter Kulbacki] contacted the local engineer for Granite State Electric (GSE), who indicated that there would need to be an upgrade to the system and it could run in the \$300,000 range to do the work. GSE worked hard to reduce the cost to the project to approximately \$30,000. Once our treatment facility was designed and bid, we requested a new service in August of 2005 indicating we needed power by late October. We were given a tentative commitment that it should be there by then. Finally in June 2006, Verizon installed taller poles for GSE (which by now was National Grid) without any notice to us. Since they were "in the same location as

existing poles”, the Town was not given notice nor a request for new pole licenses. Since the route of the poles was in the vicinity of where we were then working on restoring a section of storm damaged roadway, we happened to have a crew in the area and were able to prevent Verizon from setting poles through drain lines, sewers and water mains. The pole work was completed within a week. However, the existing licensed poles still remain with telephone and cable on them where the power has been moved and upgraded. No license requests have been received to keep the older poles, so two sets of poles exist on single licenses which have not been modified and we have not received a schedule of when the utilities will be transferred to the new poles.

Power is now to the site. However, the transformer standard was changed from when we designed the treatment facility and now we have been told by National Grid that connection to the transformer will add approximately \$30,000 and 42 days to the period when our treatment facility will be completed.

Intersection of Reservoir and Lyme Road upgrade: [Peter Kulbacki] called both Verizon and GSE approximately three years ago to notify them of the potential work. He received no response from Verizon. A GSE Electric Engineer indicated that relocation of utilities would be very expensive (approximately \$500,000) that the Town would be responsible for. Our budget for the intersection work is \$185,000 which includes easements, the construction of a roundabout, repaving, landscaping, irrigation, curbing and design. Given our past frustrations with utility responses, we have elected to leave the utility poles in the center of the roundabout and relocate the intersection to accommodate the poles. To add more frustration, as we began to excavate we found direct bury telephone at a depth of 18” rather than the required standard of 36” minimum cover. This meant we had to hand dig approximately 400 feet of wire, adding one week of work to our eight week project.

These are typical issues we address when we work around power, telephone and cable within the rights-of-way. We redesign to avoid encountering utilities, we often wait in excess of two years to have poles removed, we do not receive schedules, there is not a clear communication process, and we add expense to infrastructure to accommodate the unwillingness or inability of the utilities to make changes for safety and the public good.

Verizon is responsible for setting poles in Hanover. In general, the electric utility (National Grid) is more responsive than Verizon. However, with the ownership change of GSE to National Grid, we have seen the responsiveness deteriorate. While many of the faces are the same, the process has changed. Any change which would establish a process, require responsiveness, accommodate municipal infrastructure, set standard requirements and provide interactions with utility managers who can make critical decisions on utility work would be an improvement.

We don’t typically have the time to escalate the process up the line as most of our work must be done during school vacations due to the traffic constraints, weather, fiscal year budget cycles (July 1 – June 30) and to inconvenience the fewest motorists, pedestrians and businesses.

There are many other instances of communications issues and delays relating to utilities. These are too numerous to include here and some predate January 2005.

KEENE

City of Keene staff does not utilize a written SOP. The standard procedure begins with a meeting with the utilities at the project site one or more times to get an assessment of the complexity of utilities’ portion of the project. Preliminary plans are shared at the first meeting. The next phase includes engineering with as much input from the utilities as is required, and this is typically followed by a formal

letter and/or plan submittal. This planning typically works well, but does not always result in adequate follow-through by the utilities.

NEWMARKET

No response provided.

PORTSMOUTH

Public utilities generally must be moved prior to construction commencing. As such, and as explained in a prior response, the City holds a meeting each spring to review municipal projects for the upcoming construction season. All utilities are invited to attend. Projects identified during that meeting are rarely cancelled. There are infrequent occasions when the schedule slides and a project may be pushed back from perhaps late spring to summer. In such cases, the City does not typically notify utilities when a project is pushed off a few months. As explained above, the utilities generally must be relocated prior to construction commencing. If the utilities are relocated a few months before construction commences, so much the better. Often the City has to make last minute calls to get Verizon to move its equipment when the project is on schedule. If the utilities want to juggle their schedules, they are welcome to contact the City to inquire if the project is still on its original schedule, but the City sees no reason to take the affirmative step. Utilities that are being relocated during construction are also addressed at the spring meeting. There is generally such regular contact between the City and the PSNH representatives (PSNH has pole-setting responsibility in Portsmouth) that there is rarely a gap in information regarding scheduling and needs. The difficulty is usually Verizon. Attached as Exhibit Portsmouth 4-21C is the project map for the most recent construction season. This map was used at the spring meeting and details of each project were addressed at the meeting.

RAYMOND

There is no formal process for scheduling changes.

SALEM

Varies depending on the severity of the scheduling change, the type of project, whom the change affects and who the project manager is.

SEABROOK

No response provided.

STRATHAM

Scheduling of projects and project timelines are done in a narrative fashion with no set form or format.

RESPONSES PROVIDED BY:

Exeter: Keith Noyes, Public Works Director

Hanover: Peter Kulbacki, Director of Public Works

Keene: Tom Dutton, City Engineer, Department of Public Works

Newmarket: Clay Mitchell, Planning Consultant

Portsmouth: Steve Parkinson, Public Works Director

Raymond: Dennis G. McCarthy, Public Works Director

Salem: James Brown, Engineering Department

Seabrook:

Stratham: Paul Deschaine, Town Administrator